

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID J. SCOTT,

Plaintiff,

v.

Case No. 1:04-cv-125
HON. DAVID W. McKEAGUE*

T. TOWNSEL-MUNDAY,

Defendant.

**ORDER AND JUDGMENT
APPROVING REPORT AND RECOMMENDATION**

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on June 2, 2005. The Report and Recommendation was duly served on the parties, and no objection has been made thereto within the time required by law.

Plaintiff filed a timely motion for extension of time to respond to the report and recommendation. The magistrate judge denied the motion in an order dated June 30, 2005. Regardless, plaintiff filed untimely objections on July 7, 2005, and on July 11, 2005, plaintiff appealed the magistrate judge's order. The Court finds no error in the magistrate judge's order, and has denied plaintiff's appeal in an order issued contemporaneously herewith. The objections are therefore not properly before the Court.

Yet, even if the Court were to consider the objections, they would be found to be without merit. The magistrate judge correctly determined that plaintiff failed to exhaust his grievance remedies. Plaintiff failed to show that he submitted his requests for grievance forms and that the

*Hon. David W. McKeague, United States Circuit Judge, Sixth Circuit Court of Appeals, sitting by designation.

requests were denied. Additionally, the magistrate judge properly granted defendant's motion for summary judgment. Defendant was facially justified in issuing the misconduct tickets under the circumstances, and the fact that plaintiff was able to successfully challenge the tickets, resulting in dismissal, is insufficient to create a genuine issue of material fact in support of a showing that the tickets were retaliatory. Therefore, because plaintiff has failed to substantiate a First Amendment retaliation claim, defendant is entitled to qualified immunity for the reasons explained by the magistrate judge.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Report and Recommendation of the Magistrate Judge (Docket #53) is **APPROVED** and **ADOPTED** as the opinion of the Court.
2. Defendant's motion to dismiss and/or for summary judgment (Docket #22) is **GRANTED** and plaintiff's complaint is **DISMISSED**, without prejudice, for failure to exhaust grievance remedies. Plaintiff's motion for leave to file excess pages (Docket #59) is **DENIED** as moot.
3. The Court can discern no good-faith basis for an appeal. Accordingly, an appeal of this action would not be taken in good faith.

Dated: July 28, 2005

/s/ David W. McKeague
DAVID W. McKEAGUE
UNITED STATES CIRCUIT JUDGE